

1 DEPARTMENT OF REAL ESTATE
2 P. O. Box 187000
3 Sacramento, CA 95818-7000
4 Telephone: (916) 227-0789

FILED
OCT - 8 2003

DEPARTMENT OF REAL ESTATE

By: *Katherine Contreras*

8 BEFORE THE DEPARTMENT OF REAL ESTATE

9 STATE OF CALIFORNIA

10 * * *

11 In the Matter of the Accusation of)
12) NO. H-8254 SF
13 ATTARHA INVESTMENT,)
14 CORPORATION, and) STIPULATION AND AGREEMENT
15 M. M. ATTARHA,)
16 Respondents.)

17 It is hereby stipulated by and between ATTARHA
18 INVESTMENT CORPORATION and M. M. ATTAHRA (hereafter Respondents)
19 represented by Vanessa Jarvis, Attorney at Law, Ericksen,
20 Arbuthnot, Kilduff, Day & Lindstrom, Inc., and the Complainant,
21 acting by and through Deidre L. Johnson, Counsel for the
22 Department of Real Estate, as follows for the purpose of settling
23 and disposing the Accusation filed on November 23, 2002, in this
24 matter:

25 1. All issues which were to be contested and all
26 evidence which was to be presented by Complainant and Respondents
27

1 at a formal hearing on the Accusation, which hearing was to be
2 held in accordance with the provisions of the Administrative
3 Procedures Act (APA), shall instead and in place thereof be
4 submitted solely on the basis of the provisions of this
5 Stipulation and Agreement.

6 2. Respondents have received, read and understand the
7 Statement to Respondents, and the Discovery Provisions of the APA
8 filed by the Department of Real Estate in this proceeding.

9 3. On December 3, 2002, Respondents filed their Notice
10 of Defense pursuant to Section 11505 of the Government Code for
11 the purpose of requesting a hearing on the allegations in the
12 Accusation. Respondents each hereby freely and voluntarily
13 withdraw said Notice of Defense. Respondents acknowledges that
14 they each understand that by withdrawing said Notice of Defense
15 they will each thereby waive their rights to require the
16 Commissioner to prove the allegations in the Accusation at a
17 contested hearing held in accordance with the provisions of the
18 APA, and that they will waive other rights afforded to them in
19 connection with the hearing such as the right to present evidence
20 in defense of the allegations in the Accusation and the right to
21 cross-examine witnesses.

22 4. Respondents, pursuant to the limitations set forth
23 below, hereby admit that the factual allegations in Paragraphs I
24 through VI of the Accusation filed in this proceeding are true
25 and correct and the Real Estate Commissioner shall not be
26 required to provide further evidence of such allegations.

1 5. Without admitting the truth of the allegations
2 contained in the remaining paragraphs of the Accusation,
3 Respondents stipulate that they will not interpose a defense
4 thereto. This Stipulation is based on the factual allegations
5 contained in the Accusation. In the interests of expedience and
6 economy, Respondents choose not to contest these allegations, but
7 to remain silent and understand that, as a result thereof, these
8 factual allegations, without being admitted or denied, will serve
9 as the basis for the disciplinary action stipulated to herein.
10 The Real Estate Commissioner shall not be required to provide
11 further evidence to prove said factual allegations.

12 6. It is understood by the parties that the Real
13 Estate Commissioner may adopt the Stipulation and Agreement as
14 the decision in this matter thereby imposing the penalty and
15 sanctions on the real estate license and license rights of
16 Respondents, as set forth in the below "Order". In the event
17 that the Commissioner in her discretion does not adopt the
18 Stipulation and Agreement, it shall be void and of no effect, and
19 Respondents shall retain the rights to a hearing and proceeding
20 on the Accusation under all the provisions of the APA and shall
21 not be bound by any admission or waiver made herein.

22 7. The Order or any subsequent Order of the Real
23 Estate Commissioner made pursuant to this Stipulation and
24 Agreement shall not constitute an estoppel, merger or bar to any
25 further administrative or civil proceedings by the Department
26 of Real Estate with respect to any matters which were not
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1 specifically alleged to be causes for accusation in this
2 proceeding.

3 DETERMINATION OF ISSUES

4 By reason of the foregoing stipulations, admissions and
5 waivers and for the purpose of settlement of the pending
6 Accusation without a hearing, it is stipulated and agreed that
7 the following determination of issues shall be made:

8 I

9 The acts and/or omissions of Respondent ATTARHA
10 INVESTMENT CORPORATION, as stipulated above, violate Section
11 10159.5 of the California Business and Professions Code
12 (hereafter the Code), and constitute grounds for disciplinary
13 action against the real estate license(s) and license rights of
14 Respondent under the provisions of Sections 10137 and 10177(d) of
15 the Code.

16 II

17 The acts and/or omissions of Respondent M. M. ATTARHA,
18 as stipulated above, constitute grounds for disciplinary action
19 against the real estate license(s) and license rights of
20 Respondent under the provisions of Section 10177(h) of the Code.

21 ORDER

22 A. All real estate licenses and license rights of
23 Respondents ATTARHA INVESTMENT CORPORATION and M. M. ATTARHA,
24 shall be suspended for a period of one hundred (100) days from
25 the effective date of the Decision.

1 B. The first fifty (50) days of said suspension as to
2 each Respondent are stayed for a period of two (2) years upon the
3 following terms and conditions:

4 (1) Respondents shall obey all laws, rules and
5 regulations governing the rights, duties and
6 responsibilities of a real estate licensee in the
7 State of California; and,

8 (2) That no final subsequent determination be made,
9 after hearing or upon stipulation, that cause for
10 disciplinary action has occurred within two (2)
11 years from the effective date of the Decision.
12 Should such a determination be made, the
13 Commissioner may, in her discretion, vacate and
14 set aside the stay order and reimpose all or a
15 portion of the stayed suspension. Should no such
16 determination be made pursuant to this condition
17 or condition C below, the stay imposed herein
18 shall become permanent.

19 (3) Respondent M. M. ATTARHA shall, within six (6)
20 months from the effective date of this Decision,
21 take and pass the Professional Responsibility
22 Examination administered by the Department
23 including the payment of the appropriate
24 examination fee. If Respondent fails to satisfy
25 this condition, the Commissioner may order
26 suspension of Respondent's license until
27 Respondent passes the examination.

1 C. If Respondents ATTARHA INVESTMENT CORPORATION and
2 M. M. ATTARHA petition the Department in writing pursuant to
3 Section 10175.2 of the Code prior to the effective date of the
4 Decision, the remaining fifty (50) days of said suspension as to
5 each Respondent shall be stayed upon condition that:

6 (1) Respondents shall each pay a monetary penalty
7 pursuant to Section 10175.2 of the Code at the
8 rate of \$200.00 each, for each day of suspension,
9 for a total maximum monetary penalty of \$10,000.00
10 each, or \$20,000 for both Respondents.

11 (2) Said payment shall be in the form of a cashier's
12 check(s) or certified check(s) made payable to the
13 Recovery Account of the Real Estate Fund. Said
14 check(s) must be received by the Department prior
15 to the effective date of the Decision in this
16 matter.

17 (3) No further cause for disciplinary action against
18 the license of each Respondent occurs within two
19 (2) years from the effective date of the Decision.

20 (4) If Respondents fail to pay the monetary penalty in
21 accordance with the terms and conditions of the
22 Decision, the Commissioner may, without a hearing,
23 order the immediate execution of all or any part
24 of the stayed suspension, in which event,
25 Respondents shall not be entitled to any repayment
26 nor credit, prorated or otherwise, for money paid
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to the Department under the terms of this Decision.

(5) If Respondents pay the monetary penalty and if no further cause for disciplinary action against the real estate licenses of Respondents occurs within two (2) years from the effective date of the Decision, the stay hereby granted pursuant to this condition or condition B above shall become permanent.

(6) If the Real Estate Commissioner determines that further cause for disciplinary action against either Respondent's license has occurred within two (2) years from the effective date of the Decision, the stay of suspension hereby granted to that Respondent, or such portion of the stay as the Real Estate Commissioner shall deem appropriate, shall be vacated.

June 18, 2003
DATED

Deidre L. Johnson
DEIDRE L. JOHNSON
Counsel for the Complainant

* * *

I have read the Stipulation and Agreement, have discussed it with my counsel, and its terms are understood by me and are agreeable and acceptable to me. I understand that I am waiving rights given to me by the California Administrative Procedure Act, and I willingly, intelligently and voluntarily waive those rights, including the right of requiring the

1 Commissioner to prove the allegations in the Accusation at a
2 hearing at which I would have the right to cross-examine
3 witnesses against me and to present evidence in defense and
4 mitigation of the charges.

5 ATTARHA INVESTMENT CORPORATION
6 Respondent

7 6/17/03

8 DATED

9 By: 

10 M. M. ATTARHA
11 President

12 6/17/03

13 DATED

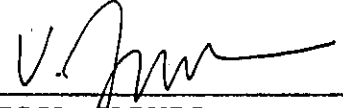
14 By: 

15 M. M. ATTARHA
16 Respondent

17 APPROVED AS TO FORM:

18 June 17, 2003

19 DATED


20 
21 VANESSA JARVIS
22 Counsel for Respondents

23 * * *

24 The foregoing Stipulation and Agreement is hereby
25 adopted as my Decision and shall become effective at 12 o'clock
26 noon on October 28, 2003.

27 IT IS SO ORDERED July 8, 2003.

PAULA REDDISH ZINNEMANN
Real Estate Commissioner



**BEFORE THE DEPARTMENT OF REAL ESTATE
STATE OF CALIFORNIA**

FILED
APR 18 2003

DEPARTMENT OF REAL ESTATE

In the Matter of the Accusation of

ATTARHA INVESTMENT CORPORATION,
and, M. M. ATTARHA,

Case No. H-8254 SF

OAH No. N-2003040219

Respondents

NOTICE OF HEARING ON ACCUSATION

To the above named respondents:

You are hereby notified that a hearing will be held before the Department of Real Estate at

**OFFICE OF ADMINISTRATIVE HEARING, THE ELIHU HARRIS STATE BUILDING,
1515 CLAY STREET, SUITE 206, OAKLAND, CALIFORNIA 94612**

on **JUNE 19, 2003**, at the hour of **9:00 AM**, or as soon thereafter as the matter can be heard, upon the Accusation served upon you. If you object to the place of hearing, you must notify the presiding administrative law judge of the Office of Administrative Hearings within ten (10) days after this notice is served on you. Failure to notify the presiding administrative law judge within ten days will deprive you of a change in the place of the hearing.

You may be present at the hearing. You have the right to be represented by an attorney at your own expense. You are not entitled to the appointment of an attorney to represent you at public expense. You are entitled to represent yourself without legal counsel. If you are not present in person nor represented by counsel at the hearing, the Department may take disciplinary action against you based upon any express admission or other evidence including affidavits, without any notice to you.

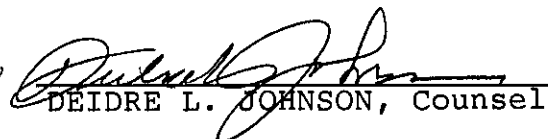
You may present any relevant evidence and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to the Department of Real Estate.

The hearing shall be conducted in the English language. If you want to offer the testimony of any witness who does not proficiently speak the English language, you must provide your own interpreter and pay his or her costs. The interpreter must be certified in accordance with Sections 11435.30 and 11435.55 of the Government Code.

DEPARTMENT OF REAL ESTATE

Dated: APRIL 17, 2003

By


DEIDRE L. JOHNSON, Counsel

1 DEIDRE L. JOHNSON, COUNSEL
2 DEPARTMENT OF REAL ESTATE
3 P. O. Box 187000
4 Sacramento, CA 95818-7000

5 Telephone: (916) 227-0789

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DEPARTMENT OF REAL ESTATE

By *Kathleen Contreras*

8 BEFORE THE
9 DEPARTMENT OF REAL ESTATE
10 STATE OF CALIFORNIA

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12	In the Matter of the Accusation of)	
)	
13	ATTARHA INVESTMENT)	NO. H-8254 SF
	CORPORATION, and)	
14	M. M. ATTARHA,)	<u>ACCUSATION</u>
)	
15	Respondents.)	
)	

17 The Complainant, LES R. BETTENCOURT, a Deputy Real
18 Estate Commissioner of the State of California, for cause of
19 Accusation against ATTARHA INVESTMENT CORPORATION and
20 M. M. ATTARHA, is informed and alleges as follows:

21 I

22 The Complainant, LES R. BETTENCOURT, a Deputy Real
23 Estate Commissioner of the State of California, makes this
24 Accusation against Respondents in his official capacity and not
25 otherwise.

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II

Respondents ATTARHA INVESTMENT CORPORATION and M. M. ATTARHA are presently licensed and/or have license rights under the Real Estate Law, Part 1 of Division 4 of the California Business and Professions Code (hereafter the Code).

III

ATTARHA INVESTMENT CORPORATION (hereafter AIC) is presently licensed by the Department of Real Estate (hereafter the Department) and has license rights as a real estate broker corporation, individually and doing business as BETTER HOMES REALTY MAIN and NORTHERN CALIFORNIA BANCORP.

IV

M. M. ATTARHA (hereafter ATTARHA) is presently licensed by the Department and has license rights as the designated broker officer of AIC. At all times herein mentioned, ATTARHA directed and controlled the affairs of the company.

V

On or about August 24, 1998, the real estate broker license of WALTER JOSEPH EDMONSON (hereafter EDMONSON) expired. At no time subsequent to August 24, 1998, has EDMONSON been licensed by the Department as either a real estate broker or salesperson.

VI

At all times herein mentioned, AIC engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California, including the operation and conduct of a resale brokerage

1 business with the public wherein it sold or offered to sell,
2 bought or offered to buy, solicited prospective sellers or
3 purchasers of, and/or negotiated the purchase, sale or exchange
4 of real property.

5 VII

6 Beginning prior to August of 1998, EDMONSON, was
7 employed by AIC in California. At least within the last three
8 years, subsequent to the expiration of EDMONSON's real estate
9 salesperson license as alleged above, EDMONSON, performed acts
10 in California for AIC and ATTARHA, for or in expectation of
11 compensation, and solicited or negotiated purchases and sales of
12 real property in various transactions, including but not limited
13 to the following:

14

15 DATE	PROPERTY	PARTY	GROSS COMPENSATION
16 Offer 17 11/00	6416 Outlook Ave, Oakland	Page/MPI Funding	Terminated
18 COE 19 11/17/00	3577 Brunell Drive, Oakland	Hayes/Larson	\$17,100
20 COE 21 4/24/01	90 La Salle Ave, Oakland	Gon/McCreary	\$21,875
22 COE 23 7/9/01	2349 Dashwood Ave, Oakland	Yasin/Jones	\$ 8,100

24

25 VIII

26 AIC and ATTARHA engaged in activities for which a real
27 estate license is required, with respect to the transactions

1 alleged in Paragraph VII above, under a fictitious business name
2 of MONTCLAIR BETTER HOMES REALTY without a fictitious business
3 name license for that name from the Department.

4 IX

5 The acts and services performed by EDMONSON, as
6 above described, are acts and services that require a real
7 estate license under the provisions of Sections 10131(a) of the
8 Code.

9 X

10 At all times above mentioned, ATTARHA was responsible,
11 as the designated real estate officer, for the supervision and
12 control of the activities conducted on behalf of the company by
13 its officers, agents, and employees, and failed to so exercise
14 reasonable supervision and control. In particular, ATTARHA
15 permitted, ratified and/or caused some or all of the conduct
16 alleged above to occur, and/or failed to take reasonable steps
17 to oversee the daily operations of AIC, including but not limited
18 to the establishment and maintenance of licensing records for
19 agents and employees, and the implementation of policies, rules,
20 procedures, and systems to review, oversee, inspect, monitor,
21 and manage the business to ensure compliance by the company with
22 the Real Estate Law.


23 XI

24 The above acts and/or omissions of AIC violate
25 Section 10159.5 of the Code, and constitute grounds for
26 disciplinary action pursuant to Sections 10137 and 10177(d) of
27 the Code.

1 XII

2 The acts and/or omissions of ATTARHA as alleged above
3 constitute grounds for disciplinary action under the provisions
4 of Section 10177(h) of the Code.

5 WHEREFORE, Complainant prays that a hearing be
6 conducted on the allegations of this Accusation and that upon
7 proof thereof a decision be rendered imposing disciplinary
8 action against all licenses and license rights of Respondents
9 under the Real Estate Law (Part 1 of Division 4 of the Business
10 and Professions Code), and for such other and further relief as
11 may be proper under other provisions of law.

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15 
16 LES R. BETTENCOURT
17 Deputy Real Estate Commissioner
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19 Dated at Oakland, California,
20 this 6th day of September, 2002.
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